

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6485 of 1997

with

SPECIAL CIVIL APPLICATION NO 6486 OF 1997

with

SPECIAL CIVIL APPLICATION No 7682 OF 1997

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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RELUMAL VERSIMAL BIJANI

Versus

STATE OF GUJARAT

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Appearance:

SPECIAL CIVIL APPLICATION NO. 6485 OF 1997:

MR HARIN P RAVAL for Petitioner

Mr DP Joshi Asstt. GP for Respondent No. 1 & 2.

NANAVATY ADVOCATES for Respondent No. 5

SPECIAL CIVIL APPLICATION NO 6486 OF 1997:

MR HARIN P RAVAL for Petitioner.

MR DP JOSHI Asstt GP for Respondent No. 1 & 2.

NANAVATY ADVOCATES for Respondent No. 5.

SPECIAL CIVIL APPLICATION NO. 7682 OF 1997 :

MR HARIN P RAVAL for Petitioner.

Ms V.K.Parekh, Asstt.GP for Respondent No. 1 & 2.

NANAVATY ADVOCATES for Respondent No. 5.

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CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 03/12/97

ORAL JUDGEMENT

With the consent of the learned advocates appearing for all the parties, these petitions are taken up for final hearing today.

2. Petitioners in all these petitions were appointed as Octroi Guards under the Bantva Nagar Panchayat which has since been converted into a Municipal Borough with effect from 15th April, 1994. On 1st August, 1973, the petitioners were promoted as Octroi Clerks in the pay scale of Rs.130-240. Pursuant to the revision of pay of the Government servants with effect from 1st January, 1973, pay of the panchayat servants was also revised. Accordingly, petitioners became entitled to pay in the pay scale of Rs.260-400. Necessary order of pay fixation was made on 13th December, 1987. I am informed that the arrears of salary for the period from 1st January, 1973 to 31st January, 1978 have been paid to all of the petitioners. However, the arrears of salary which became due from 1st February, 1978 to 31st December, 1985 has not been paid as yet. The pay of the Government servants was further revised with effect from 1st January, 1986 and accordingly, the petitioners' pay has also been revised with effect from 1st January, 1986. However, necessary orders applying the higher pay scales to the petitioners and other employees of the erstwhile panchayat was made as late as in the month of March, 1993. Even after taking that decision in the month of March, 1993, consequential orders of pay fixation were made on 2nd December, 1993. Inspite of the pay fixation made on 2nd December, 1993, the petitioners were not paid the salary in the higher scale until 1st April, 1997. Thus, the petitioners have become entitled to the arrears of salary in the scale of Rs. 950-1500 for the period from 1st January, 1986 to 31st March, 1997. Details of arrears of salary has been given inthe memos of the petitions. Learned advocate Mr. Raval appearing for the petitioners has submitted that the amount of arrears of salary which has become due and payable to the petitioners since February, 1978 has not been paid to them for extraneous reasons. He has submitted that sufficient funds were available to the erstwhile panchayat and also to the present Municipal Borough.

However, the funds are not released against the arrears of salary due and payable to the petitioners. He, therefore, asserts that the petitioners have right to interest on the said amount.

Learned advocate Mr. Chhaya has appeared for the Municipal Borough. The Chief Officer of the Municipal Borough has made an affidavit-in-reply to the Special Civil Application No. 6485 of 1997. The Municipal Borough does not dispute its liability to pay the arrears of salary to the petitioners. However, the only defence pleaded by the Municipal Borough is that of the financial constraints. It is submitted that many of the retired employees of the former panchayat as well as the present Municipal Borough are not yet paid their dues and many of them have yet to be paid the arrears of salary on account of revision of pay which became effective from 1st January, 1973. In view of the same, the Municipal Borough has expressed its inability to pay the dues to the petitioners.

In view of the judgment of the Supreme Court in the matter of Chief Conservator of Forests and Anr. versus Jagannath Maruti Kondhare and Ors. [1996 SCC (L & S) 500], plea of financial constraints advanced by the Municipal Borough cannot be sustained. The Municipal Borough cannot be permitted to advance the plea of financial constraints and to elude its financial liabilities towards its existing and former employees. The Municipal Borough is bound to discharge its financial liability.

Petitions are, therefore allowed. Respondent No. 3 Bantwa Municipal Borough is directed to pay to the petitioners herein all the arrears of salary within a period of six months from today. In the event, respondent No. 3 fails to pay the arrears of salary to the petitioners within the period of six months as directed hereinabove, it shall pay the interest on the aforesaid amount at the rate of 12 percent per annum from the date of this order till the date of payment. Rule Nisi issued oneach of the above petitions is made absolute to the aforesaid extent. There shall be no order as to costs. Copy of this order be placed in each of the petitions.

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Vyas